beneficial user of his land for the protection of those who come upon it without right. When the presence of the trespasser is known, or ought to be known, the landowner must use due care not actively to injure him. *Herrick* v. *Wixom*, 121 Mich. 384; *Fearons* v. *Kansas City Elevated Ry. Co.*, 180 Mo. 208. But where the defendant does not himself bring force to bear on the plaintiff, the user is beneficial, and the danger contingent and remote, the wisdom of imposing such liability on the landowner is questionable.

DEAD BODIES — NATURE OF RIGHT IN. — The plaintiff shipped the body of her deceased son by the defendants' railway and, through a mistake of its servants, the body was put off at the wrong station, causing delay and expense to the plaintiff. This action was for damages on account of the defendants' negligence. *Held*, that the corpse is the property of the plaintiff, subject to limitations upon its disposition and use, and that she can recover damages for the expenses incurred. *Miner* v. *Canadian Pacific R. Co.*, 15 West. L. Rep. 161 (Alberta, Aug. 8, 1910). See NOTES, p. 315.

DEATH BY WRONGFUL ACT — DAMAGES IN STATUTORY ACTION — RIGHT OF WIFE NOT SUPPORTED BY HUSBAND TO SUE FOR HIS DEATH. — The plaintiff's husband deserted her shortly after their marriage and thereafter contributed nothing toward her support. He was killed by reason of the defendant's negligence, and the plaintiff brought an action as beneficiary under the death statute. The court directed a verdict for the defendant. *Held*, that the case should have been submitted to the jury. *Ingersoll* v. *Mackinac Ry. Co.*, 128 N. W. 227 (Mich.).

In such a case the rule in Michigan is to allow no recovery, if no pecuniary damage is shown. *Hurst* v. *Detroit City Ry.*, 84 Mich. 539. The weight of authority gives the plaintiff nominal damages, but the Michigan rule seems sounder. The death statutes are framed to recompense the beneficiaries, and if there is nothing for which to recompense them there should be no action. There is a pecuniary damage here in the loss of the action which the wife might have brought at any time against her husband to force him to support her. The loss of the possibility of bringing an action is enough to create a reasonable probability that damage has been suffered, and hence presents a question for the jury, even though, in the final event, they should find that the wife would probably never have recovered anything from the deceased. This view is supported by other authority. *Baltimore & Ohio R. Co.* v. *State*, 81 Md. 371; *International & Great Northern R. Co.* v. *Culpepper*, 19 Tex. Civ. App. 182.

DIVORCE — DEFENSES — DELAY. — A husband, after an invalid divorce, married again. After knowing of this marriage for ten years the first wife sued for a divorce, charging adultery with the second wife within the last year. By statute such a suit must be brought within five years of the discovery of the offense, or if the defendant committed the offense outside the state, within five years after his return. *Held*, that a divorce be granted. *Ackerman* v. *Ackerman*, 44 N. Y. L. J. 1059 (N. Y., Ct. App., Nov. 22, 1910).

The majority of the court regarded the continuous cohabitation with the second wife as a single offense, and only allowed the plaintiff to sue because the defendant had been continuously out of the state. Three judges, however, concurred in the result on the ground that each act of adultery constituted a new cause of action. Strict logic favors this view, but on the authorities the rule seems to be that when charged with notice of the defendant's adulterous intercourse, although that relation exists at the date of the suit, the plaintiff cannot set up specific acts in that continuing intercourse as a ground for divorce after the statutory period. *Valleau* v. *Valleau*, 6 Paige (N. Y.) 207; *Dutcher* v. *Dutcher*, 39 Wis. 651. The delay of the aggrieved party has allowed the

defendant's unlawful relation to attain a permanency which the law prefers to protect rather than disturb. The defendant is held from irregular relations with other women than his second wife by the fact that any new offense will revive his first wife's cause of action. *Sewall* v. *Sewall*, 122 Mass. 156. See *Cooke* v. *Cooke*, 3 Swab. & Tr. 126.

ELECTRIC WIRES — APPLICATION OF THE PRINCIPLE OF FLETCHER *v.* RYLANDS. — The plaintiff, a steam railway company, used electric wires to transmit signals, etc. The defendant on a private right of way alongside began to operate an electric railway, necessarily using so strong a current that the plaintiff's signal system was interfered with. The plaintiff sought to enjoin the defendant from operating its railroad without devices to prevent the interference. *Held*, that the injunction will not be granted. *Lake Shore & Michigan Southern Ry. Co.* v. *Chicago, Lake Shore, & South Bend Ry. Co.*, 92 N. E. 989 (Ind.).

The court refused to apply *Fletcher* v. *Rylands* because that case has been discredited in some courts of this country, and because the defendant was a quasi-public corporation legally authorized to make a non-natural use of its land. But undoubtedly the defendant had collected on its land something likely to do mischief, and was allowing it to escape to his neighbor's damage. The real answer to the plaintiff's claim seems to be an affirmative defense of justification. *National Telephone Co.* v. *Baker*, [1893] 2 Ch. 186; *Cincinnati Inclined Plane Ry. Co.* v. *City & Suburban Telegraph Ass'n*, 48 Oh. St. 390; *Hudson River Telephone Co.* v. *Watervliet Turnpike & Ry. Co.*, 135 N. Y. 393. In these cases the defendant escapes because it is using the highway as it is legally authorized to do, and because it is furthering the dominant use of public travel while the telephone companies are making only a subordinate use of the highway. And so in the principal case the defendant, although not making use of a public street, was conducting in a reasonable manner a business essential to the community. The question is not one of responsibility but of justification. See 8 HARV. L. REV. 200, 208.

EVIDENCE — GENERAL PRINCIPLES AND RULES OF EXCLUSION — IRRELEVANCY: VIOLATION OF MUNICIPAL ORDINANCE. — The plaintiff was injured by falling into a hole in the sidewalk in front of a building owned by the defendant. A municipal ordinance required abutting owners to keep the sidewalks in repair. In an action to recover for the injury, the plaintiff introduced the ordinance as evidence of negligence. *Held*, that the evidence was improperly admitted. *English* v. *Kwint*, 44 N. Y. L. J. 847 (N. Y. App. Div., Nov. 1910).

Where the plaintiff is a member of the class for whose benefit the ordinance was passed, nearly all jurisdictions agree that the violation of a municipal ordinance, if it is the proximate cause of injury, is evidence of negligence. *Hamilton* v. *Minneapolis Desk Mfg. Co.*, 80 N. W. 693 (Minn.); *Conrad* v. *Springfield Consolidated Ry. Co.*, 88 N. E. 180 (Ill.). *Contra, Louisville & Nashville R. Co.* v. *Dalton*, 102 Ky. 290. Some courts hold it to be negligence *per se*. See *Pennsylvania Co.* v. *Hensil*, 70 Ind. 569. Others consider it *primâ facie* evidence of negligence. *Chicago & Joliet Elec. Ry. Co.* v. *Freeman*, 125 Ill. App. 318. By the weight of authority it is simply some evidence for the consideration of the jury. *Biesegel* v. *New York Central R. Co.*, 14 Abb. Prac. (N. Y.) 29. Logically it would seem to be material only in cases where reliance on the observance of the ordinance would justify a relaxed standard of care on the plaintiff's part, and knowledge of such reliance would increase the defendant's duty to take care. *Phila. & Reading R. Co.* v. *Ervin*, 89 Pa. St. 71. In the principal case, the ordinance was not designed to protect the members of the public. *City of Hartford* v. *Talcott*, 48 Conn. 525. Its purpose was to secure the performance by property-owners of a duty imposed upon the city. *City of Keokuk* v. *Dis-*